

1                               IN THE UNITED STATES DISTRICT COURT  
2                               FOR THE DISTRICT OF HAWAII

3           UNITED STATES OF AMERICA,           ) CRIMINAL NO. 14-00010-HG  
4    ) )  
5                               Plaintiff,           ) Honolulu, Hawaii  
6                               vs.                 ) April 8, 2014  
7    ) 3:00 P.M.  
8                               JENNIFER ANN McTIGUE, (1) ) Motion for Withdrawal of  
9                               Defendant.           ) Counsel  
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10                               TRANSCRIPT OF PROCEEDINGS  
11                               BEFORE THE HONORABLE BARRY M. KURREN  
12                               UNITED STATES MAGISTRATE JUDGE

11 APPEARANCES:

12           For the Government:           Kenneth M. Sorenson  
13    Office of the United States Attorney  
14    Prince Kuhio Federal Building  
15    300 Ala Moana Blvd Ste 6100  
16    Honolulu, HI 96850  
17           For Defendant (1):           Rustam Barbee  
18    Law Office of Rustam A. Barbee  
19    1188 Bishop St Ste 2606  
20    Honolulu, HI 96813  
21           Official Court           Cynthia Ott, RMR, CRR  
22           Transcriber:           United States District Court  
23    300 Ala Moana Blvd, Room C270  
24    Honolulu, Hawaii 96850

24           Proceedings recorded by digital electronic recording,  
25           transcript produced with computer-aided transcription (CAT).

1 TUESDAY, APRIL 8, 2014 3:00 P.M.

2 THE CLERK: Criminal 14-00010-HG, United States of  
3 America versus Defendant 1, Jennifer Ann McTigue. This hearing  
4 has been called on a motion for withdrawal of counsel.  
5 Counsel, appearances for the record, please.

6 MR. SORENSON: Good afternoon, Your Honor. Ken  
7 Sorenson here for the government.

8 THE COURT: Good afternoon.

9 MR. BARBEE: Good afternoon, Your Honor. Rustam  
10 Barbee appearing with Jennifer Ann McTigue. She's present in  
11 court.

12 THE COURT: Yes, good afternoon. Well, Mr. Barbee,  
13 what's going on here?

14 MR. BARBEE: I don't have -- well, I guess I do have  
15 something to add to the motion I filed. The afternoon or the  
16 day after I filed the motion, I became aware that in addition  
17 to the letter terminating counsel for cause, which I referred  
18 to in my declaration, that Mrs. McTigue had actually filed a  
19 civil lawsuit naming me as a defendant in Civil Number  
20 14-00152EKW.

21 On March 31st, Judge Watson entered an order  
22 dismissing that complaint with prejudice, and then I guess  
23 today Mrs. McTigue has filed a notice of motion to vacate void  
24 judgment, still naming me as a defendant, among others. So I  
25 think, you know, based upon the record here, that I cannot

1 proceed to represent her while she's suing me civilly and  
2 making allegations that I cannot (inaudible).

3 THE COURT: So, Mrs. McTigue, you want to represent  
4 yourself in this case?

5 THE DEFENDANT: No, but I would like a competent  
6 counsel. For the record, I really like Mr. Barbee, but we just  
7 have a difference of opinions. And I -- because I read the FBI  
8 letters they sent to me regarding the forfeiture and seizures,  
9 they said you need to file a claim in regards to the seizure of  
10 your property pursuant to title, all these different statutes.

11 So I studied those statutes. I realized that any  
12 forfeiture or seizure of property is an admiralty procedure, so  
13 that's why I filed my libel of review as the claim for my  
14 property. So I need a counsel that is proficient in  
15 supplemental rules of admiralty and administrative procedure.

16 THE COURT: So this wasn't a lawsuit against him  
17 indicating he is doing something wrong in your case?

18 THE DEFENDANT: Well, I do feel like that we have a  
19 difference of opinions. I feel that he told me things that I  
20 don't believe to be 100 percent true. He said that I can't  
21 have discovery. He waived my rights to certify the charges on  
22 the record, which I would have never done and which I would  
23 like to correct today. He doesn't have a good understanding of  
24 administrative procedure, which is used in all IRS and banking  
25 cases today.

1           He doesn't understand admiralty. He didn't catch the  
2 fact that Nick Baron, the FBI agent who filed --

3           THE COURT: I don't know what you're talking about  
4 admiralty. Admiralty has nothing to do with any of this. Now,  
5 I mean there may be -- I'm not going to get into an argument  
6 with you about it.

7           THE DEFENDANT: Okay.

8           THE COURT: But for the life of me, you know, I can't  
9 understand, you know, where you are coming from on that point.  
10 I mean, if you want to challenge the forfeiture, there  
11 certainly are ways and procedures to challenge the forfeiture,  
12 but it isn't through any kind of admiralty jurisdiction. I'll  
13 tell you that.

14           So I mean, that's -- I don't really know what you're  
15 talking about.

16           MR. SORENSON: Your Honor, maybe I can shed some light  
17 on that. I believe what she's referring to is that the  
18 supplemental rules for admiralty procedures govern some of the  
19 procedures for forfeiture actions and --

20           THE COURT: But it doesn't transform this into some  
21 sort of admiralty case.

22           MR. SORENSON: No, no, it does not. It does not. In  
23 fact, the law is pretty clear on what civil claimants need to  
24 do in civil forfeiture actions when we seize property, pursuant  
25 to our seizure warrant authority. Then I think she's referring

1 to Capper, which is --

2 THE COURT: See, here's the other thing, a lawyer  
3 defending you in this case is not going to be representing you  
4 in connection with civil forfeiture proceedings.

5 THE DEFENDANT: Okay. But I did find, pursuant to 18  
6 USC 306(a), as set forth in 18 USC 983(b)(1)(A), it says that  
7 provided in relation to the libel, it says, provided that  
8 appointed counsel in a criminal matter must also handle the  
9 civil. So in order to do that, the counsel needs to be  
10 familiar with United States administrative procedure and  
11 admiralty law and supplemental rules of procedure.

12 THE COURT: Well, you know --

13 MR. SORENSON: Well, possibly shortcutting that, Your  
14 Honor, we went ahead and filed a criminal forfeiture as part of  
15 the indictment in this case.

16 THE COURT: And that's where --

17 MR. SORENSON: Thereby kind of nullifying all of the  
18 civil talk.

19 THE COURT: Well, that's --

20 MR. SORENSON: And now this has become a criminal  
21 forfeiture.

22 THE COURT: Right.

23 MR. SORENSON: So it 's something that's within the  
24 bailiwick of her defense counsel, and I think Russ  
25 understands --

1           THE COURT: On the criminal case, on the criminal  
2 side?

3           MR. SORENSON: Yes. Yes.

4           THE COURT: Well, I guess what I need to decide here  
5 is whether there's anything that can be repaired or resolved  
6 between the two of you. I take it you -- what is your position  
7 about Mr. Barbee's request to withdraw?

8           THE DEFENDANT: I mean, I'm fine with that. I think  
9 it would be better considering the circumstances.

10          THE COURT: He's one of the better lawyers on our  
11 Criminal Justice Act panel, I have to tell you that. I mean,  
12 if there's a breakdown in the attorney-client relationship  
13 between you, I mean, I have no choice, but I'm not going to go  
14 through a cycle --

15          THE DEFENDANT: Right.

16          THE COURT: -- of lawyer after lawyer, just won't  
17 happen.

18          THE DEFENDANT: I understand that. But one thing  
19 specifically, which was kind of the reason for all of this was  
20 because he said to me, Jennifer, you have three choices, you  
21 can have me as your attorney, you can have me as your -- I  
22 don't know if it's called co-counsel.

23          MR. BARBEE: Standby.

24          THE DEFENDANT: Standby attorney.

25          THE COURT: Right.

1           THE DEFENDANT: Or you can do it alone. And I said,  
2 okay, because I'm leaning towards the co-counsel, and then he  
3 said, but, if you need to challenge jurisdiction, I can't be a  
4 part of that, so.

5           THE COURT: The --

6           THE DEFENDANT: The possibility of me challenging  
7 jurisdiction is high. So if he -- he already told me he can't,  
8 so.

9           THE COURT: What are you talking about? What do you  
10 mean?

11          THE DEFENDANT: Well, if I --

12          THE COURT: Mr. Barbee, what is it that you are  
13 suggesting here?

14          MR. SORENSON: Your Honor, I think maybe at this  
15 stage, perhaps government counsel should leave since there may  
16 be some kind of strategic discussion or attorney-client  
17 communications that --

18          THE COURT: You know, that may be a point.

19          MR. SORENSON: I would probably be better not --

20          THE COURT: I'm going to have a private discussion  
21 with you. And I'll clear the courtroom and the record will be  
22 under seal.

23                 (Sealed portion not included herein.)

24          THE COURT: Well, now we're back on the record in open  
25 court. I, you know, reluctantly, but I think I'm compelled to

1 the conclusion that there is a breakdown in the attorney-client  
2 relationship here and, therefore, will grant the motion for  
3 withdrawal. I'll appoint another attorney off of the panel to  
4 represent you and, Mr. Barbee, if you would assist in the  
5 transition of the file material to new counsel --

6 MR. BARBEE: Yes, Your Honor.

7 THE COURT: -- and apprise counsel of deadlines and  
8 dates in the case.

9 MR. BARBEE: Yes, Judge.

10 THE COURT: Okay. Anything else to take up?

11 MR. SORENSON: Not at this --

12 THE COURT: I didn't ask whether you had any position  
13 on the matter, but as an afterthought --

14 MR. SORENSON: It's the same level of respect I  
15 usually get.

16 THE COURT: Indeed.

17 MR. SORENSON: No. No.

18 THE COURT: But anyway --

19 MR. SORENSON: Yeah, indeed.

20 THE COURT: -- I take it you don't have any position?

21 MR. SORENSON: No, Your Honor. I understand that,  
22 obviously, conversations occurred and I trust the court's  
23 judgment on this.

24 THE COURT: Okay. Thanks. Okay. So that's the way  
25 it goes. We'll have a new lawyer on board and, hopefully, this



1 will work out better. Okay?

2 THE DEFENDANT: Thank you.

3 MR. BARBEE: Thank you, Judge.

4 (The proceedings concluded at 3:25 p.m., April 8, 2014.)

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1 TRANSCRIBER'S CERTIFICATE

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10 the United States.

11

DATED at Honolulu, Hawaii, August 6, 2014.

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14

/s/ CYNTHIA R. OTT  
CYNTHIA R. OTT, RMR, CRR

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